92-1701

Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

THE ALTON & SOUTHERN RAILWAY COMPANY,
Petitioner,

vs.

CHARLES E. MILLER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

DONALD J. DAHLMANN*
LESLIE G. OFFERGELD
WALKER AND WILLIAMS, P.C.
4343 West Main Street
Belleville, Illinois 62223
(618) 277-1000

Attorneys for the Petitioner, The Alton and Southern Railway Company

*Counsel of Record

St. Louis Law Printing, Inc. 13307 Manchester Rd. St. Louis, MO 63131 314-231-4477

QUESTION PRESENTED

Whether Section 2 of the Federal Safety Appliance Act (45 U.S.C. Sec. 2) is violated with respect to uncoupling equipment where the cars are equipped with couplers which can be uncoupled without the necessity of men going between the ends of the cars.

PARTIES BELOW

The Alton and Southern Railway Company has no parent or subsidiary company.

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

OPINIONS BELOW

The order of the Illinois Supreme Court denying discretionary review, which is unreported, is appended hereto at page A-10. The opinion of the Illinois Intermediate Appellate Court is reported at 233 Ill.App.3d 896, 599 N.E.2d 582, 174 Ill.Dec. 798.

JURISDICTION

The order of the Illinois Supreme Court denying discretionary review of the judgment of the Illinois Intermediate Appellate Court was entered on February 3, 1993. The judgment of the Illinois Appellate Court was entered on September 14, 1992. No

petitions for rehearing have been or will be filed with the state courts. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(a).

STATUTORY PROVISIONS INVOLVED

45 U.S.C. Section 2 (1988)

> "*Automatic couplers:*
> It shall be unlawful for any railroad to haul or permit to be hauled or used on its line any car not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars."

STATEMENT OF THE CASE

The Evidence

On September 27, 1989, respondent, Charles Miller, filed a two count complaint. (R. 3) Count II was brought pursuant to the Federal Safety Appliance Act and alleged that on October 11, 1988, while employed by petitioner, Alton & Southern Railway Company, the respondent was injured due to a defective pinlifter. (R. 4)

On October 21, 1991, petitioner filed a motion for summary judgment on count II of the complaint. (R. 242) Petitioner's motion stated that there was uncontroverted evidence by way of respondent's discovery deposition testimony that respondent uncoupled the car in question with the pin lifting mechanism and at no time was he required to go between the ends of any railroad cars to do so. (R. 243) The motion for summary judgment set forth the pertinent section of the Safety Appliance Act governing the operation of couplers: couplers . . . which can be uncoupled without the necessity of men going between the ends of the cars. (R. 242-243)

At the hearing on the motion for summary judgment, petitioner offered the court respondent's discovery deposition transcript as proof that he testified he did not have to go between the cars to uncouple them. (Tr. 9-10) However, respondent's attorney agreed that there was no dispute as to the fact that respondent did not have to go between the cars in order to uncouple them. (Tr. 10)

The trial court entered an order granting petitioner's motion for summary judgment on Count II on October 21, 1991. (R 271) On motion of the respondent, the trial court also ordered that there was no just reason for delaying enforcement or appeal of its order granting summary judgment on Count II. (R. 271) On respondent's appeal to the Illinois Appellate Court, the trial court's summary judgment order was reversed. (A-9) The Illinois Supreme Court denied discretionary review of the decision of the Illinois Appellate Court. (A-10)

How Federal Question Was Presented

In the first instance, the petitioner raised the federal question at issue by a motion for summary judgment on court II of respondent's complaint. (R. 242, motion for summary judgment) The trial court granted respondent's motion for summary judgment. (R. 271, ruling on motion for summary judgment) Respondent filed a notice of appeal to the Illinois Appellate Court from the summary judgment rendered in favor of the petitioner on Count II of the complaint. (A-12) The Illinois Appellate Court reversed, finding that the trial court erred in granting petitioner's motion for summary judgment under the Safety Appliance Act solely on the fact that respondent was not required to go between the ends of the railroad cars to uncouple them. (A-9) Petitioner's petition to the Illinois Supreme Court for discretionary review of the Illinois Appellate Court's decision was denied. (A-10)

REASONS FOR GRANTING THE WRIT

I. SINCE THIS COURT IS THE FINAL AUTHORITY ON THE STATUTORY CONSTRUCTION OF THE FEDERAL SAFETY APPLIANCE ACT, IT SHOULD SETTLE THE QUESTION OF WHETHER SECTION 2 OF THE ACT WITH RESPECT TO UNCOUPLING EQUIPMENT IS VIOLATED WHERE THE CARS ARE EQUIPPED WITH COUPLERS WHICH CAN BE UNCOUPLED WITHOUT THE NECESSITY OF MEN GOING BETWEEN THE ENDS OF THE CARS.

A. THE PLAIN LANGUAGE OF AND THE LEGISLATIVE HISTORY BEHIND SECTION 2 OF THE FSAA SUPPORT THE PETITIONER'S PROPOSED STATUTORY CONSTRUCTION.

Section 2 of the Federal Safety Appliance Act (FSAA) provides:

> "It shall be unlawful for any railroad to haul or permit to be hauled or used on its line any car not equipped with *couplers* coupling automatically by impact, and *which can be uncoupled without the necessity of men going between the ends of the cars.*" (45 U.S.C. Sec. 2 (1988).) (Emphasis added)

The United States Supreme Court has never had the occasion to consider the requirements of Section 2 of the FSAA with respect to uncoupling devices in particular. Rather, it has only decided cases in which an employee was injured due to the failure of cars to couple automatically on impact. The only question presented in this case is whether or not a violation of Section 2 of the FSAA occurs where an employee is injured while standing outside the ends of the cars because of an allegedly defective uncoupling device. Since this Court is the final authority on the construction of the FSAA, this question should be settled by it.

The petitioner submits that the plain language of the statute and its legislative history compel the conclusion that with respect to uncoupling equipment, no violation of Section 2 occurs unless the employee had to go between the cars in order to uncouple them. First of all, the plain language of the statute states with respect to uncoupling equipment, any coupler which can be uncoupled without the men going between the ends of the cars will suffice. In the instant case, it is undisputed that the cars at issue were equipped with couplers which could be uncoupled without the necessity of men going between the ends of the cars, and that the respondent successfully uncoupled the cars from outside of the rails.

However, the state appellate court held that a violation of Section 2 can occur in the matter of uncoupling devices regardless of whether the employee had to go between the cars to effect the uncoupling. This holding is contrary to the plain language of the statute.

In *United Transp. Union v. Lewis*, 711 F.2d 233 (D.C. Cir. 1983), the court relied on the plain language of the statute in determining that as used in Section 2, the phrase "without the necessity of men going between the ends of the cars" modifies the word "couplers" and describes the kind of coupling equipment that will pass statutory muster — i.e. couplers that can be coupled and uncoupled without the necessity of the men going between the ends of the cars. (*Lewis, supra*, 711 F.2d at 243-244) The court also noted that such a construction was consistent with the Act when viewed in a historical perspective. At the time Congress enacted Section 2, there existed coupling devices which, while coupling automatically by impact, nonetheless required brakemen to go between the cars and uncouple them by hand. (*Lewis, supra*, 711 F.2d at 244 *citing Automatic Couplers and Power Brakes: Hearings Before the [Senate] Committee on Interstate Commerce on S. 811, S. 893 and S. 1698*, 52nd Cong., 1st Sess. 14 (1892) (Statement of W.E. Rodgers) By adding the concluding phrase, Congress banned such coupler systems.

In addition, the legislative history surrounding the enactment of Section 2 shows that the congressional focus was to mandate the use of couplers that can be coupled and uncoupled from outside of the cars. The prevailing coupling system in use in 1892 was the link-and-pin coupler, which required brakemen to stand entirely between the rails to couple and uncouple cars. The "automatic" couplers then in use did little to reduce the grave risk of injury from the link-and-pin coupling operations. For example, there were thirty seven different types of automatic couplers available. (*Lewis, supra,* 711 F.2d at 246 *citing* H.R.Rep. No. 1678, 52nd Cong., 1st Sess. 5-6 (1892).) (hereafter "House Report") Since a brakeman could not be sure that any one coupler would couple with another, he usually had to go between the cars before he could even determine how the cars were to be coupled. (*Id. citing* S.Rep. No. 1049, 52nd Cong., 1st Sess. 5 (1892).) (hereafter "Senate Report") Therefore, instead of eliminating the risks of coupling operations, the introduction of the myriad types of automatic couplers frequently exacerbated the problem. (*Id. citing* House Report at 3) To reduce such risks, Congress determined to mandate the use of couplers that can be coupled and uncoupled from outside the cars, and which are fully compatible with one another. (*Lewis, supra,* at 247 *citing* House Report at 3; Senate Report at 6)

As seen by the legislative history, Congress prescribed the type of equipment which would satisfy the statute by using the phrase "without the necessity of the men going between the ends of the cars" before the words "which can be uncoupled." If the cars are equipped with uncoupling devices which can be operated from the side of the cars, no violation of the statute occurs. (See *United States v. Southern Ry.*, 341 F.2d 669, 671 (4th Cir. 1965).

For example, in *Devine v. Calumet River R.R. Co.*, 259 Ill. 449 (1913), the locomotive in question was equipped with an automatic coupler that would couple by impact and in order to make

a coupling, it was not necessary to go between the cars. However, the Illinois Supreme Court found that since the coupling device did not have a lever extending to the side, which would permit a switchman to uncouple it without the necessity of going between the cars, the coupling device did not comply with the requirements of Section 2 of the FSAA. To satisfy the statute, the Court stated, any standard coupler which couples automatically by impact and which can be uncoupled without requiring men to go between the ends of cars will suffice. (*Devine, supra,* 259 Ill. at 456, 457)

Similarly, in *Weiss v. The Belt Line Ry. Co. of Chicago,* 186 Ill.App. 43 (1st Dist. 1914), the court recognized that there can be no controversy over the ordinary meaning of the word "uncoupling" or as that word is used in the FSAA. It stated:

> "Two things are required by section 2 of that act: (1) That the couplers shall couple automatically by impact; and (2) that they can be uncoupled without the necessity of men going between the ends of the cars." (*Weiss, supra,* 186 Ill.App. at 49)

To illustrate the statutory requirement for uncoupling devices, in *Penn. R. Co. v. Jones,* 300 F. 525 (6th Cir. 1924), the plaintiff was engaged in a switching operation wherein the two lead cars farthest from the engine were to be uncoupled. Plaintiff was riding at the right-hand forward corner of the third car with his left foot in the stirrup on the side of the car at the corner. In his right hand, plaintiff held a lantern to give signals with. His right foot rested on the outer end of a lever which was operated by pushing downward with the foot, after which the coupling pin was to lift and separate the cars. After two unsuccessful efforts to lift the pin with his foot, plaintiff swung his body around between the ends of the cars putting his whole weight upon the lever. This time, the pin lifted and the cars uncoupled, but the swinging of the lantern with this movement was misinterpreted

for a stop signal. As a result, the car plaintiff was on suddenly slowed and he was thrown down upon the track.

The defendant assigned error in the trial court's refusal to give instructions defining the statutory phrase "going between the ends of the cars." The appellate court agreed that the putting in of an arm or leg to the point within the corner of the car where the outer end of the operating lever was located did not constitute a violation of Section 2. While it held the trial court erred in failing to give an instruction to the effect that the statute did not reach that slight degree of "going between the ends of the cars," the appellate court found the error harmless. The evidence was undisputed that plaintiff put the greater part of his body between the ends of the cars within the rail line and this complete movement by him underlaid his injury. (*Jones, supra,* 300 F. at 528)

B. THERE IS NO REQUIREMENT IN SECTION 2 THAT UNCOUPLING OCCUR AUTOMATICALLY.

Those cases which hold that a violation of the Act is raised by proof of the cars failure to uncouple automatically when the attempt is made by an employee while standing safely outside of the cars are contrary to the plain wording of the statute. (See *Southern Pac. Co. v. Mahl,* 406 F.2d 1201 (5th Cir. 1969); *Plouffe v. Burlington No. Inc.,* 730 P.2d 1148 (Mont. 1986).) Nowhere does this statute state that automatic uncoupling is required. In fact, the *Mahl* court agreed that only coupling is required to be automatic. (*Mahl, supra,* 406 F.2d at 1205)

As recognized by the state appellate court in this case, the United States Supreme Court has never held in a case involving an injury during uncoupling operations that a violation of Section 2 can occur where the appliance can be operated without the necessity of men going between the ends of the cars. Instead, this Court has merely observed that there are two independent

requirements of the FSAA for coupling equipment: (1) that they *couple automatically upon impact; and* (2) that they can be coupled without the necessity of the men going between the ends of the cars. (See *Louisville & Nashville R. Co. v. Layton*, 243 U.S. 627, 37 S.Ct. 456, 61 L.Ed. 931 (1917) (Failure of cars to couple automatically on impact constitutes violation of FSAA, regardless of whether employee is between the cars when injured.)

For example, in *Johnson v. Southern Pac. Co.*, 196 U.S. 1, 25 S.Ct. 785, 49 L.Ed. 356 (1904), the locomotive and car at issue were equipped with automatic couplers, but the couplers on each were of different types and would not actually couple with each other on impact. The circuit court of appeals found that since the locomotive and car were equipped with automatic couplers, Section 2 of the FSAA was satisfied.

However, the Supreme Court, after reviewing the legislative intention behind the requirement of automatic coupling by impact, found that the use of couplers "actually coupling automatically" was mandated. While no particular device or type of coupler was adopted in the statute itself, whatever the devices used, they had to be effectively interchangeable. The Court also rejected the contention that "the words 'without the necessity of men going between the ends of the cars,' which are the test of compliance with Section 2, apply only to the act of uncoupling." Rather, it held the phrase literally covers both coupling and uncoupling, and should be read with a comma after the word "uncoupled." (*Johnson, supra*, 196 U.S. at 370)

On the other hand, as noted above, there is no requirement in Section 2 that uncoupling be automatic. Instead, the test of compliance with regard to uncoupling appliances is that they can be uncoupled without the necessity of the men going between the ends of the cars. It is undisputed that this requirement was met in the case at bar. Therefore, petitioner was entitled to summary

judgment on respondent's claimed violation of Section 2 of the FSAA.

C. AN EMPLOYEE INJURED FROM PULLING AN ALLEGEDLY DEFECTIVE PINLIFTER WHILE STANDING SAFELY OUTSIDE OF THE CARS WAS NOT INTENDED TO BE AFFORDED SPECIAL TREATMENT OVER ANOTHER RAILROAD EMPLOYEE INJURED FROM ANY OTHER ALLEGEDLY DEFECTIVE PIECE OF EQUIPMENT OR MACHINERY.

When Section 2 of the FSAA was enacted, the legislature did not intend to provide special treatment in the form of a strict liability remedy to railroad employees who are allegedly injured while doing the simple job of pulling pinlifters while standing safely outside of the cars. Instead, it is clear from the language of the statute itself and the legislative history that Congress was concerned with the grave risk of serious injury from men having to go between two moving railroad cars to uncouple them. On the other hand, an employee "pulling pins" outside of the rails is not exposed to any greater risk of injury than those employees who are required to prove negligence against their railroad employer to recover. For example, there is no legitimate difference between an employee who suffers an injury due to an allegedly defective pinlifter than an employee who suffers injury from any other allegedly defective piece of equipment or machinery. Yet, under the state appellate court's decision, the former employee is afforded special treatment in the form of a strict liability remedy when the latter must prove negligence to recover. This irrational result was not the intent of the legislature when it passed Section 2 with respect to uncoupling operations. Strict liability is a harsh remedy and was intended to be strictly limited to the dangerous operation of men having to go between two moving railroad cars to effect an uncoupling.

CONCLUSION

For the reasons stated herein, certiorari should be granted.

Respectfully submitted,

DONALD J. DAHLMANN*
LESLIE G. OFFERGELD
WALKER AND WILLIAMS, P.C.
4343 West Main Street
Belleville, IL 62223
(618) 277-1000

Attorneys for the Petitioner,
The Alton & Southern
Railway Company

*Counsel of Record

April, 1993

APPENDIX

APPENDIX A

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

No. 89-L-963

CHARLES E. MILLER,
Plaintiff-Appellant,

v.

ALTON & SOUTHERN RAILWAY COMPANY,
a corporation,
Defendant-Appellee.

Appeal from the Circuit Court of Madison County.

Honorable P.J. O'Neill,
Judge Presiding.

[Filed: September 14, 1992]

JUSTICE WELCH delivered the opinion of the court:

Plaintiff, Charles Miller, appeals from a summary judgment entered in favor of defendant, Alton & Southern Railway Company, by the circuit court of Madison County, on count II of plaintiff's complaint alleging violation of Federal Safety Appliance Act. (45 U.S.C.S. sec. 1 *et. seq.*) The complaint, filed September 27, 1989, alleges that plaintiff was employed as a conductor for defendant railroad and that while plaintiff was attempting to perform his duties uncoupling railroad cars, a defective pin lifter stuck and caused him to receive injuries to his back.

On October 21, 1991, defendant filed a motion for summary judgment alleging that defendant had successfully uncoupled the cars with the pin-lifting mechanism without the necessity of going between the cars and that therefore the Federal Safety

Appliance Act did not apply. On that same day, the circuit court of Madison County granted defendant's motion for summary judgment and, having entered judgment for defendant on count II of plaintiff's complaint, found no just reason for delaying enforcement or appeal of the judgment. Accordingly, plaintiff brings this appeal.

Section 2 of the Federal Safety Appliance Act provides,

> "[I]t shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars." (45 U.S.C.S. sec. 2.)

It is clear that the phrase "without the necessity of men going between the ends of the cars" applies to both the acts of coupling and uncoupling. (*Johnson v. Southern Pacific Co.* (1904), 196 U.S. 1, 18-19, 49 L.Ed. 363, __, 25 S.Ct. 158, __.) The court explained, "[t]he phrase literally covers both coupling and uncoupling, and if read, as it should be, with a comma after the word 'uncoupled,' this becomes entirely clear." 196 U.S. at 18-19, 49 L.Ed. at __, 25 S.Ct. at __.

A person injured as a result of a railroad's violation of the Federal Safety Appliance Act may bring a civil action for damages under the Federal Employer's Liability Act. (45 U.S.C.S. sec. 51 *et. seq.*) While the Federal Employer's Liability Act (FELA) requires a finding of negligence on the part of the railroad, a violation of the Federal Safety Appliance Act (FSAA) is considered to be negligence *per se*, or conclusive proof of negligence, on the part of the railroad in an action brought under the FELA. Annot., 16 A.L.R.2d 654 (1951).

The evidence as to how plaintiff incurred his injury is undisputed. Plaintiff testified in his deposition that he pulled a pin

lifter in an attempt to uncouple two railroad cars. The pin lifter stuck and threw plaintiff off balance, pulling him in one direction. Plaintiff kept a steady pull on the pin lifter until it finally released. When the pin lifter suddenly released, it threw plaintiff in the other direction, twisting and injuring his back. At no time was it necessary for plaintiff to go between the railroad cars to uncouple them, and plaintiff did successfully uncouple the cars without putting his body between them. The evidence also reveals that the car which plaintiff was attempting to uncouple had been "cornered", that is, the corner of the car had come into contact with something and was caved in. The housing for the pin lifter, which holds it in the proper position, was bent down. The pin lifter operates to open the knuckle of the coupler mechanism, uncoupling the cars.

In support of its motion for summary judgment, defendant argues that a violation of section 2 of the FSAA occurs only when it is necessary for the employee to go between the railroad cars to effect uncoupling. Defendant also argues that where the employee is not required to go between the cars to effect uncoupling, there is no violation of the FSAA even if the pin lifter or uncoupling mechanism is defective and the employee is injured as a result.

Defendant relies on our opinion in *Ellis v. St. Louis Southwestern Ry. Co.* (1990), 193 Ill.App.3d 357, 549 N.E.2d 899, in which we stated,

> "Had the facts in the instant case unequivocally indicated that plaintiff was injured while going between two railway cars due to the cars' failure to automatically couple, or uncouple, without it becoming necessary to an employee to go between the cars, then section 2 of the Act would be applicable. However, in this case, there is no evidence in the record to support a claim that plaintiff was injured while between two cars. * * * Therefore, a finding of strict

> liability pursuant to the Act would have been improper on these facts." 193 Ill.App.3d at 363, 549 N.E.2d 902-03.

Defendant argues that *Ellis* stands for the proposition that section 2 of the FSAA simply does not apply where the employee is not required to go between the railroad cars to uncouple them. Thus, defendant argues, it is entitled to summary judgment in the instant case where it is undisputed that plaintiff was not required to go between the railroad cars to effect the uncoupling.

We see the need to clarify our holding in *Ellis*, for defendant relies on it for a proposition of law which we do not intend. In *Ellis*, as in the instant case, the plaintiff was injured while attempting to use a pin lifter to uncouple railroad cars. One of the pins did not release on the first pull. Plaintiff jerked on the pin three or four times, but was still unable to disengage the knuckle. Finally, plaintiff jerked hard on the pin, injuring his back.

On plaintiff's suit for personal injuries, a jury returned a verdict for defendant railroad. One of plaintiff's arguments on appeal was that the trial court had erred in failing to direct a verdict in favor of plaintiff, or in failing to set aside the jury's verdict and order a new trial. Plaintiff argued that, pursuant to the FSAA, the railroad was strictly liable for plaintiff's injuries which resulted from his attempt to correct a malfunctioning coupler. In affirming the trial court, we made the statement relied on by defendant herein. However, by that statement, we did not intend to hold that section 2 of the FSAA applies only when the plaintiff is required to go between railroad cars to uncouple them and thereby is injured.

What we held in *Ellis* is that where it is disputed whether the plaintiff was between the railroad cars when injured, a directed verdict is improper. Where the plaintiff is required to go between railroad cars in order to successfully uncouple them and is injured while so between the cars, the railroad is strictly liable for that plaintiff's injuries, whether the uncoupler is defective or not.

In such a case, where it is undisputed that the plaintiff was between the cars when injured, a directed verdict, or summary judgment, is proper.

However, where a plaintiff is injured not while between railroad cars but while attempting to uncouple them, the railroad is liable only if the coupler was defective at the time plaintiff attempted to use it and that defective condition was a proximate cause of plaintiff's injuries. Because the questions whether the coupler was defective and whether the defect was a cause of plaintiff's injuries are for the jury, directed verdict or summary judgment is not proper.

In *Ellis,* the trial court properly allowed the case to go to the jury on the questions whether plaintiff was, in fact, between the railroad cars when injured and, if not, whether the coupling mechanism was defective, causing plaintiff's injuries. If the jury found that plaintiff was not between the cars at the time he was injured but that the coupling mechanism was defective, causing plaintiff's injuries, the railroad would be absolutely liable for plaintiff's injuries. In such a case, the question of negligence, or due care, by the railroad is not at issue. A defective coupling mechanism violates the FSAA and is negligence *per se*.

Our intended holding in *Ellis* is consistent with decisions of the United States Supreme Court which have construed section 2 of the FSAA. Those cases hold that, under section 2 of the FSAA, not only must the railroad provide couplers which couple automatically and uncouple without the necessity of men going between the cars, but the couplers must also couple and uncouple safely and adequately, that is, they must not be defective. If an employee is injured as a result of a defective coupler, section 2 of the FSAA is violated regardless of whether the employee was between railroad cars at the time of the injury. Such in interpretation is consistent with the purpose of the FSAA, which is remedial in nature and therefore to be construed liberally. See

Bocook v. Louisville & Nashville R.R. Co. (D.Ky. 1946), 67 F.Supp. 154, 159.

In *Louisville & Nashville R.R. Co. v. Layton* (1917), 243 U.S. 617, 61 L.Ed. 931, 37 S.Ct. 456, the plaintiff was injured when the railroad car on which he was standing for the purpose of releasing the brake was struck by a cut of cars which had failed to couple with the locomotive when impacted for that purpose. Instead of coupling, the force of the impact drove the cut of cars into the car on which plaintiff was standing, throwing him to the track and injuring him. Plaintiff recovered on the basis of a violation of section 2 of the FSAA because the cut of cars had not been equipped with a coupler which coupled automatically on impact. On appeal, the railroad argued that section 2 of the FSAA does not apply because it is intended only for the benefit of employees injured when between cars for the purpose of coupling or uncoupling them. In rejecting the railroad's argument, the Supreme Court stated,

> "While it is undoubtedly true that the immediate occasion for passing the laws requiring automatic couplers was the great number of deaths and injuries caused to employees who were obliged to go between cars to couple and uncouple them, yet these laws as written are by no means confined in their terms to the protection of employees only when so engaged. The language of the acts and the authorities we have cited make it entirely clear that the liability in damages to employees for failure to comply with the law springs from its being made unlawful to use cars not equipped as required, — not from the position the employee may be in or the work which he may be doing at the moment when he is injured." (243 U.S. at __, 61 L.Ed. at __, 37 S.Ct. at 457.)

Thus, it is not necessary that plaintiff be between railroad cars at the time of his injury in order for section 2 of the FSAA to apply.

In *Minneapolis & St. Louis R.R. Co. v. Gotschall* (1917), 244 U.S. 66, 61 L.Ed. 995, 37 S.Ct. 598, the plaintiff was a brakeman on a train. He was walking along the tops of the train cars toward the locomotive when the train separated because of the opening of a coupler on one of the cars, resulting in an automatic setting of the emergency brake and a sudden jerk which threw plaintiff off the train. The Supreme Court held that the jury was properly instructed that it could infer negligence from the fact that the coupler failed to perform its function because of the positive duty imposed by the FSAA upon the railroad to furnish safe appliances for the coupling of cars. Thus, negligence could be inferred from the fact that the coupler was defective, even if it otherwise complied with the FSAA in that it coupled automatically upon impact without the necessity of men going between the ends of the cars.

Several cases have explicitly held that once the predicate of malfunctioning equipment has been established, it is irrelevant whether a workman places all or part of his body between the case. "Indeed, if he is injured because of a defective coupler, he may recover without even having gone between the cars *at all*." *United Transportation Union v. Lewis* (D.C. Cir. 1983), 711 F.2d 233, 249.

In *Southern Pacific Co. v. Mahl* (5th Cir. 1969), 406 F.2d 1201, the plaintiff was injured while trying to uncouple two railroad cars by use of a pin lifter. After signaling the engineer for slack, plaintiff attempted to lift the pin, but the uncoupling mechanism failed to release. Plaintiff again called for slack and repeated the process, but again the mechanism failed to release. He signalled [sic] the engineer for a third try, when he applied greater force, still without success, and in the process suffered a severe strain to his body. One count of plaintiff's complaint against the railroad alleged that the uncoupling device was defective in violation of the FSAA. The jury agreed, finding that defendant had violated the FSAA and that the injury had resulted

from this violation. The railroad appealed, arguing that a violation of the FSAA predicated upon the failure of a mechanism to uncouple cannot be established without proof of the necessity of men going between the ends of the cars. The railroad pointed out that the failure of a coupling device to uncouple may result from the absence of slack rather than from a defect in the mechanism. The court, pointing out that the broad purpose of the FSAA is to assure the safety of railroad employees by requiring the railroad to furnish safe appliances for the coupling of cars, held,

> " 'The risk in coupling and uncoupling was the evil sought to be remedied,' [citation], and that risk was to be obviated by the use of couplers coupling automatically by impact and uncoupling without the necessity of men going between the ends of cars. The duty to furnish the type of couplers specified by the statute is plainly imposed. But we think the statute requires more. As one court has stated:
>
> It is not only the duty of the railroad to provide such couplers, but to keep them in such operative conditions that they will always perform their functions. *The test of compliance is the operating efficiency of the couplers with which the car is equipped.* (Emphasis added.)

[Citation.] In short, the railroad is obligated to provide safe couplers that function without exposing employees who operate them to the risk of bodily harm. But under the interpretation urged upon us by the railroad, the use of a coupling device, no matter how dangerous it might prove on occasion to the employees charged with its operation, would not constitute a violation of the Act so long as its operation did not require men to go between the cars. This interpretation is unduly narrow.

The failure of a coupler to uncouple due to a defect therein is sufficient to establish liability under the Safety Appliance Act, regardless of whether it was necessary for the employee to go

between the ends of the cars. Stated another way: In order to establish that the coupler was defective, proof of the necessity of going between the cars is not required." (*Mahl*, 406 F.2d at 1203-04.) The court went on to state, "If the switchman operates the coupler with due care in the normal manner, the jury can decide that the coupler is defective in violation of the Act by virtue of its failure to release after several attempts." (406 F.2d at 1205.) The court pointed out that failure of the mechanism to uncouple may be due to the absence of proper slack and not to a defect in the mechanism. Whether the mechanism is defective is a jury question.

We agree with the holding and reasoning of the *Mahl* court. Where, as in the instant case, the evidence is undisputed that plaintiff was not required to go between the ends of the railroad cars in order to uncouple them, the questions of whether the uncoupling mechanism was defective and whether that defective condition was a proximate cause of plaintiff's injuries remain for the jury. Thus, in the instant case, the trial court erred in granting summary judgment in favor of defendant railroad based solely on the fact that plaintiff was not required to go between the ends of the railroad cars to uncouple them.

Accordingly, we reverse the summary judgment entered by the circuit court of Madison County in favor of defendant, Alton & Southern Railway Company, on count II of plaintiff's complaint and remand this cause for further proceedings not inconsistent with this opinion.

Reversed and remanded.

GOLDENHERSH, P.J., and RARICK, J., concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

February 3, 1993

Ms. Leslie G. Offergeld
Walker & Williams, P.C.
4343 West Main Street
Belleville, IL 63323

No. 74469 – Charles E. Miller, respondent, c Alton & Southern Railway Company, etc., petitioner. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 25, 1993.

APPENDIX C

THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

No. 89-L-963

Charles Miller,
Plaintiff,

vs.

Alton & Southern Railway Co.,
Defendant.

ORDER

[Filed: October 21, 1991]

Defendant's Motion For Summary Judgment on Count II sustained. On Motion of the Plaintiff, the Court finds that there is no just reason for delaying enforcement or appeal of the Order granting Summary judgment as to Count II pursuant to Supreme Court Rule 304(a)

Date: October 21, 1991

/s/ P.J. O'Neill
P.J. O'Neill

APPENDIX D

APPEAL TO THE FIFTH DISTRICT
ILLINOIS APPELLATE COURT
FROM THE CIRCUIT COURT
THIRD JUDICIAL DISTRICT
MADISON COUNTY, ILLINOIS

Case No. 89-L-963

CHARLES E. MILLER,
Plaintiff-Appellant,

v.

ALTON & SOUTHERN RAILWAY COMPANY,
Defendant-Appellee.

NOTICE OF APPEAL

[Filed: October 30, 1991]

COMES NOW the Plaintiff-Appellant, Charles E. Milller, by and through his undersigned attorneys, Jon G. Carlson & Associates, P.C., and hereby files his Notice of Appeal from the interlocutory judgment rendered for Defendant-Appellee, Alton & Southern Railway Company, in the Circuit Court, Third Judicial Circuit, Madison County, Illinois, Cause Number 89-L-963. Plaintiff-Appellant, Charles E. Miller, prays relief in the form of reversal of judgment and remand for trial on the merits.

JON G. CARLSON & ASSOCIATES, P.C.

By: /s/ Jon G. Carlson
Jon G. Carlson IL 00392812
P.O. Box 527
90 Edwardsville Professional Park
Edwardsville, Illinois 62025
(618) 656-0066

10-31-91 Copy mailed to Appellate Court. WVP/SG

92-1701

Supreme Court, U.S.
FILED
MAR 24 1993
OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States
October Term, 1992

THE ALTON & SOUTHERN RAILWAY COMPANY,
Petitioner,

v.

CHARLES E. MILLER,
Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court of Illlinois
For The Fifth District

RESPONDENT'S BRIEF IN OPPOSITION

Of Counsel
JON G. CARLSON & ASSOCIATES, P.C.
JON G. CARLSON
90 EDWARDSVILLE PROFESSIONAL PARK
EDWARDSVILLE, IL 62025
(618) 656-0066

Counsel of Record
GARY E. PEEL
2 CENTER GROVE ROAD
EDWARDSVILLE, IL 62025
(618) 692-0500
Attorney for Respondent

PARTIES TO THE PROCEEDING

All parties to the proceeding in the Court of Appeals are identified in the caption. Pursuant to Supreme Court Rule 29.1, respondent states there are no parent or subsidiary corporations to be listed.

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No.

In The
Supreme Court of the United States
October Term, 1992

THE ALTON & SOUTHERN RAILWAY COMPANY,
Petitioner,

v.

CHARLES E. MILLER,
Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court of Illinois
For The Fifth District

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Charles E. Miller, respectfully requests that this Court deny the Alton & Southern Railway Company's Petition for Writ Certiorari, seeking review of the Fifth District Illinois Appellate Court's opinion in this case. The opinion of the Fifth District Illinois Appellate Court is reported at 233 Ill.App.3d 896, 599 N.E.2d 582, 174 Ill.Dec. 798 (1992).

STATEMENT OF THE CASE

Respondent's cause of action, brought pursuant to the Federal Safety Appliance Act, 45 U.S.C. Sections 1-34, and the Federal Employer's Liability Act, 45 U.S.C. Section 51, et seq., alleged that Respondent sustained injury to his back while attempting to uncouple a cut of cars (R.O.A., P. 3, L. 3-5). The specific allegation was that a defective pinlifter failed to operate normally and that, as a result, Respondent injured his back while pulling on the handle of the "hung up" pinlifter (R.O.A., P. 3, L. 5-7; L. 19-21; P. 4, L. 14-15). Eventually, Respondent affected the intended uncoupling (R.O.A., P. 6, L. 5-6). It is undisputed that Respondent did not go between railroad cars in order to uncouple them (R.O.A., P. 10, L. 10-13).

ARGUMENT

It is no defense to a Federal Safety Appliance Act claim that the injured Plaintiff was not required to go between the ends of railroad cars to affect an uncoupling

Respondent relies on Louisville & Nashville R. Co. v. Layton, 243 U.S. 617 (1917), for the proposition that liability under the Federal Safety Appliance Act, 45 U.S.C. Sections 1-34 (hereinafter "FSAA"), does not depend on a finding that an injured plaintiff went between railroad cars. In Layton, an engine pushing a stock car ahead of it failed in an attempt to couple with a chain of five cars. The engine struck the five cars with such force that they were driven two full car lengths into a motionless train of many cars. The plaintiff was a switchman aboard the motionless train when the chain of five cars violently impacted with it. As a result of the impact, the plaintiff sustained injury and brought suit therefor.

At trial, and subsequently on appeal, the defendant railroad contended that liability could not be predicated on a violation of the FSAA because said Act "is intended only for the benefit of employees injured when between cars for the purpose of coupling or uncoupling them." Id. at 457. In rejecting the defendant's contention, this Court reasoned as follows:

> The declared purpose of the Safety Appliance Act . . . is "to promote the safety of employees . . . upon railroads, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers ...." (citation omitted)

* * *

> While it is undoubtedly true that the immediate occasion for passing the laws requiring automatic couplers was the great number of deaths and injuries caused to employees who were obliged to go between cars to couple and uncouple them, yet these laws as written are by no means confined in their terms to the protection of employees only when so engaged. The language of the acts and the authorities we have cited make it entirely clear that the liability in damages to employees for failure to comply with the law springs from its being unlawful to use cars not equipped as required, -- not from the position the employee may be in, or the work which he may be doing at the moment when he is injured.
>
> * * *
>
> [C]arriers are liable to employees in damages whenever the failure to obey the Safety Appliance Laws is the proximate cause of injury to them when engaged in the discharge of duty. Id. at 457 (emphasis added).

Layton is dispositive of Petitioner's appellate theory. Layton leaves no room for doubt that the position of the employee, and the work in which he is engaged at the moment of injury, are not factors pertinent to the FSAA liability inquiry.

Respondent also relies on Minneapolis & St. Louis R. Company v. Gotschall, 244 U.S. 66 (1917). In Gotschall, the plaintiff's decedent, a head brakeman, was proceeding along the tops of moving railroad cars when the train separated because a defective coupler opened. As a

result, the emergency brakes automatically locked, causing a sudden jerk which threw the plaintiff's decedent off the train and under the wheels. The plaintiff brought suit under the Federal Employer's Liability Act (FELA), and the case was tried to a jury. The jury returned a verdict for the plaintiff, and the Minnesota Supreme Court affirmed.

On appeal to this Court, the defendant contended that the jury had been improperly instructed that it could find negligence on the part of the railroad from the mere happening of the accident in question. This Court, noting "the positive duty imposed by the [safety appliance] statute upon the railroad to furnish safe appliances for the coupling of cars," Id. at 67, rejected the defendant's assertion of error and affirmed judgment for the plaintiff. Necessarily implicit in this analysis is the premise that the Safety Appliance Act supports absolute liability for injuries suffered by a plaintiff as a result of a defective coupler even when the plaintiff was not attempting to affect a coupling or uncoupling, and was not between cars at the moment of injury.

Respondent submits that if liability predicated on a violation of the Safety Appliance Act was proper under the facts in Gotschall – where the plaintiff's decedent was not even attempting to make a coupling or uncoupling – then a fortiori the Safety Appliance Act supports liability in the instant case, where Respondent was consciously endeavoring to affect an uncoupling with a defective pinlifter at the time of his injury. Moreover, whereas in Gotschall the causal connection between the defect and the injury was somewhat attenuated, in the case at bar the causal connection between defect and injury is direct and proximate.

Respondent further relies on Swinson v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 294 U.S. 530 (1935). In Swinson, the

plaintiff was injured when a grab iron on which he was positioned broke away from the plank to which it was attached. The plaintiff brought suit under the FSAA and the FELA. At trial, the defendant moved for a directed verdict in its favor on the ground that, since the purpose of Congress in requiring secure grab irons was to supply an appliance to grasp with the hands and not to provide a foot brace or support to secure leverage in releasing a hand brake, the railway could not be liable because the plaintiff had used the grab iron for a purpose for which it was not intended. The trial court granted the defendant a directed verdict and the Eighth Circuit Federal Court of Appeals affirmed.

This Court reversed. In reversing, this Court specifically rejected the defendant's contention that the FSAA only supports liability where the defective safety appliance was being used for its intended purpose at the moment of injury. The Court said:

> Although this section of the [Safety Appliance] Act was originally intended for "greater security to men in coupling and uncoupling cars," it was held in Davis v. Wolfe, 263 U.S. 239, 243, that . . . an employee "can recover if the failure to comply with the requirements of the act is a proximate cause of the accident, resulting in injury to him while in the discharge of his duty, although not engaged in an operation in which the safety appliances are specifically designed to furnish him protection." Id. at 531.

In the instant case, Respondent was using the defective pinlifter for its intended purpose of uncoupling cars. If the FSAA extends liability to situations where the injured plaintiff was using a safety appliance for other than its intended purpose (e.g., Swinson), then it

must surely extend to the paradigm situation presented here, where Respondent was injured while using a pinlifter specifically for its designated salutary purpose of allowing the uncoupling of cars without going between cars.

Respondent further cites this Court to Coray v. Southern Pacific Co., 335 U.S. 520 (1949). In Coray, the plaintiff's decedent was injured when defective brakes caused a freight train to suddenly stop, and a closely following motorcar, on which plaintiff's decedent was riding, crashed into it. The plaintiff sued for damages under the FSAA and the FELA. The trial court, holding that the FSAA's protection against defective brakes did not extend to employees following and crashing into a train which stopped suddenly because of defective brake appliances, directed a verdict in the defendant's favor. On appeal, the Utah Supreme Court affirmed.

This Court reversed. In reversing, this Court directly addressed the trial court's reasoning, stating:

> We do not view the [Safety Appliance] Act's purpose so narrowly. It commands railroads not to run trains with defective brakes. An abrupt or unexpected stop due to bad brakes might be equally dangerous to employees and others as a failure to stop a train because of bad brakes. And this Act, fairly interpreted, must be held to protect all who need protection from dangerous results due to maintenance or operation of congressionally prohibited defective appliances. Id. at 522 23 (emphasis added).

The logic of the above language from the Coray opinion applies with equal force to the facts presented in the case at bar. A defective

pinlifter constitutes a danger which is violative of the FSAA regardless whether the injured plaintiff went between cars to affect an uncoupling and was injured therein, or simply pulled on a "hung up" pinlifter and injured his back. Just as in Coray, the Act "must be held to protect all who need protection from dangerous results due to [the] . . . operation of a congressionally prohibited defective appliance[]." Id.

Finally, Respondent cites this Court to Carter v. Atlanta & St. Andrews Bay Ry. Co., 338 U.S. 430 (1949). In Carter, the plaintiff was injured while trying to stop a runaway car which had been set in motion by a failed attempt at coupling. The plaintiff alleged that the failure to couple was due to a defect in the coupling mechanism, and brought suit under the FSAA and the FELA. The trial court refused to submit the FSAA claim to the jury, and the jury returned a verdict in favor of the defendant on the plaintiff's FELA claim. The Fifth Circuit Federal Court of Appeals affirmed.

This Court reversed. In attempting to clarify the requirements for liability under the FSAA, the Court stated:

> . . . Congress has directed liability if the injury resulted "in whole or in part" from defendant's . . . violation of the FSAA.
>
> * * *
>
> Certainly there was evidence upon which a jury could find a causal relation between the failure to couple [and] the action of petitioner in running and stopping the rolling car . . . thus causing injury. (citations omitted) It was error to take this phase of the case from the jury. Id. at 34 35.

Respondent suggests that if the causal connection between safety appliance defect and injury in Carter was not too attenuated or too far removed from the remedial intention of the FSAA, then it is clear beyond peradventure that, in the instant case, the nexus between the defective pinlifter and Respondent's injury falls within the remedial reach of the FSAA as well.

See, also, Southern Pac. Co. v. Mahl, 406 F.2d 1201 (5th Cir. 1969), Plouffe v. Burlington Northern, Inc., 730 P.2d 1148 (Mont. 1986), McCalley v. Seaboard Coast Line R. Co., 252 So.2d 275 (Fla. 1971), and Bocook v. Louisville & N. R. Co., 67 F.Supp. 154 (E.D. Ky. 1946).

Petitioner has suggested that United Transportation v. Lewis, 711 F.2d 233 (D.C. Cir. 1983), offers the proper interpretation of the FSAA. Lewis is not on point. The issue in Lewis was whether the FSAA merely describes requisite equipment, or whether it imposes "an independent prohibition against the act of going between the ends of the cars during uncoupling operations." Id. at 243. More specifically, the issue was whether the FSAA prohibits a railroad practice which requires employees to go between the ends of cars during coupling operations where the railroad has provided uncoupling equipment which conforms to the FSAA requirement that cars be capable of being uncoupled without the necessity of employees going between the ends of the cars. The Court said:

> Because we interpret the language and legislative history of the Act as speaking only to functional characteristics of safety appliances that must be installed on cars to be hauled in interstate commerce, we reject appellant's suggestion that the statute contains a separate prohibition of men going between cars. Id. at 248 49.

Notably, the Lewis court found the authorities cited by the appellant distinguishable for the following reason:

> Appellant's cases merely demonstrate that once the predicate of malfunctioning equipment has been established, it is irrelevant whether a workman places all or part of his body between the cars. Indeed, if he is injured because of a defective coupler, he may recover without even having gone between the cars at all. Southern Pacific Co. v. Mahl, 406 F.2d 1201 (5th Cir. 1969). But these cases cannot support the proposition that a violation of section 2 can be made out without proving that equipment has failed to perform as prescribed. Lewis, 711 F.2d at 249 (emphasis added).

(See, also, Lewis, 711 F.2d at 251 (footnote 39): "Congress imposed on railroads a duty not just to provide proper equipment, but also to guarantee its performance.")

Contrary to Petitioner's contention, Lewis fully supports Respondent's position in this appeal. In fact, the caption from Lewis, reproduced above, cites approvingly to Southern Pacific Co. v. Mahl, 406 F.2d 1201 (5th Cir. 1969), one of the cases relied on by Respondent and criticized by Petitioner. Respondent does not understand Petitioner's reliance on Lewis. Suffice it to say that Petitioner is wrong.

CONCLUSION

As demonstrated, Petitioner is misguided in its argument that prior case law supports its proposed construction of the Federal Safety Appliance Act. To the contrary, the overwhelming weight of authority is entirely opposed to Petitioner's position in this regard.

Further, Petitioner has failed to offer any justification for its prayer which effectively calls upon this Court to overrule a line of case authority almost 80 years old. In a case of statutory construction, such as this one, it would be improper for the Court to overrule its prior precedents when Congress could clearly have done so if it desired. Congress is presumed to know the law, and it has therefore implicitly endorsed the judicial gloss placed on the Federal Safety Appliance Act.

For all of the foregoing reasons, Respondent, Charles E. Miller, respectfully requests that this Honorable Court deny Petitioner, Alton & Southern Railway Company's Petition For Writ Of Certiorari.

Of Counsel
JON G. CARLSON & ASSOCIATES, P.C.
JON G. CARLSON
90 EDWARDSVILLE PROFESSIONAL PARK
62025
EDWARDSVILLE, IL 62025
(618) 656-0066

Counsel of Record
GARY E. PEEL
2 CENTER GROVE ROAD
EDWARDSVILLE, IL

(618) 692-0500
Attorney for Respondent